

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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GEORGE LUSTER,

Plaintiff,

v.

WARDEN JAMES SCHOMIG, et. al.,

Defendants.

02:04-CV-00281-LRH-LRL

ORDER

Presently before the court is George Luster's ("Luster") motion (# 66) requesting perjury charges and sanctions against Defendants' witness Scott Alexander ("Alexander"). Defendants have filed an opposition (# 69), and Luster replied (# 70).

Luster argues that perjury charges and sanctions should be imposed against Alexander because Alexander allegedly submitted an affidavit containing false statements. Specifically, Luster argues that Alexander falsely stated that his staff conducted a light study and submitted a written report showing that the High Desert Prison cell lighting was above American Correctional Association standards. Luster contends that Defendants have failed to provide him the light study and that failure to provide the study demonstrates that Alexander committed perjury. Defendants oppose the motion arguing that Alexander did not commit perjury. Attached to Defendants' points and authorities in opposition to Luster's motion is an e-mail dated February 2, 2006, addressed to Alexander. (Opp'n to Pl.'s Mot. (# 69), February 2, 2006, e-mail, Ex. A.) The e-mail indicates that

1 the lighting was measured the previous day at 25.2 foot candles or 267 lumens. *Id.* Luster objects
2 to this document arguing that it is an e-mail discussing the study rather than the study itself.

3 Luster's motion will be denied. The fact that a document was not produced during
4 discovery is not proof that the document does not exist. The Federal Rules of Civil Procedure
5 provide a mechanism to accomplish discovery. Furthermore, the points and authorities filed by
6 Defendants indicate that the e-mail is in fact the light study report in question. Thus, there is no
7 evidence that any false statements were made by Alexander.

8 IT IS THEREFORE ORDERED that Luster's motion (# 66) requesting perjury charges and
9 sanctions against Defendants' witness Scott Alexander is hereby DENIED.

10 IT IS SO ORDERED.

11 DATED this 16th day of October, 2007.



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14 LARRY R. HICKS
15 UNITED STATES DISTRICT JUDGE
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